

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)
Plaintiff,) Case No. 4:06CR3163
vs.)
MALLORY GILES,)
Defendant.)

**TENTATIVE
FINDINGS**

I am in receipt of the presentence investigation report and addendum in this case. Except for the defendant's motion for variance (filing 55) and the defendant's objection for lack of mitigating role (filing 49)¹, there are no objections or motions for departure or variance.

IT IS ORDERED that:

(1) The undersigned will consult and follow the Guidelines to the extent permitted and required by United States v. Booker, 125 S. Ct. 738 (2005). In this regard, the undersigned gives notice that, unless otherwise ordered, he will (a) give the advisory Guidelines substantial weight; (b) resolve all factual disputes relevant to sentencing by the greater weight of the evidence and without the aid of a jury; (c) impose upon the government the burden of proof on all Guideline-enhancements; (d) impose upon the defendant the burden of proof on all Guideline-mitigators; (e) depart from the advisory Guidelines, if appropriate, using pre-Booker departure theory; and (f) in cases where a departure using pre-Booker departure theory is not warranted, deviate or vary from the Guidelines only when there is a plainly superior, principled

¹In his motion for variance (filing 55), the defendant states that he has "no objections to the sentencing guideline calculation contained in the Presentence Investigation Report and Addendum." Yet he has filed an objection asserting that he is entitled to a mitigating role. (Filing 49.)

reason which justifies a sentence different than that called for by application of the advisory Guidelines.

- (2) With regard to the defendant's objection and motion:
 - A. The defendant's objection for lack of mitigating role adjustment (filing 49) is denied. According to the defendant,² the facts relied upon for the adjustment are set forth in the presentence report, but those facts do not convince me that a mitigating role is warranted.
 - B. The defendant's motion for variance (filing 55) will be resolved at sentencing.
- (3) Except to the extent (if at all) that I have sustained an objection or granted a motion or reserved an issue for later resolution in the preceding paragraph, the parties are herewith notified that my tentative findings are that the presentence report is correct in all respects.
- (4) If **any** party wishes to challenge these tentative findings, said party shall, as soon as possible, but in any event at least five (5) business days before sentencing, file in the court file and serve upon opposing counsel and the court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and how long such a hearing would take.
- (5) Absent submission of the information required by the preceding

²See filing 49 at CM/ECF page 2.

paragraph of this order, my tentative findings may become final and the presentence report may be adopted and relied upon by me without more.

(6) Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

May 17, 2007.

BY THE COURT:

s/ *Richard G. Kopf*
United States District Judge